

COMMITTEE REPORT

MR. PRESIDENT:

The Senate Committee on Corrections, Criminal and Civil Procedures, to which was referred Senate Bill No. 248, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 35-38-1-7.1, AS AMENDED BY P.L.183-1999,
- 3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2001]: Sec. 7.1. (a) In determining what sentence to impose
- 5 for a crime, the court shall consider:
- 6 (1) the risk that the person will commit another crime;
- 7 (2) the nature and circumstances of the crime committed;
- 8 (3) the person's:
- 9 (A) prior criminal record;
- 10 (B) character; and
- 11 (C) condition;
- 12 (4) whether the victim of the crime was less than twelve (12)
- 13 years of age or at least sixty-five (65) years of age;
- 14 **(5) whether the person committed the offense in the presence**
- 15 **of an unemancipated child less than eighteen (18) years of age;**
- 16 ~~(5)~~ (6) whether the person violated a protective order issued
- 17 against the person under IC 31-15 or IC 31-16 (or IC 31-1-11.5
- 18 before its repeal) or IC 34-26-2 (or IC 34-4-5.1 before its repeal);
- 19 and
- 20 ~~(6)~~ (7) any oral or written statement made by a victim of the
- 21 crime.

1 (b) The court may consider the following factors as aggravating
2 circumstances or as favoring imposing consecutive terms of
3 imprisonment:

4 (1) The person has recently violated the conditions of any
5 probation, parole, or pardon granted to the person.

6 (2) The person has a history of criminal or delinquent activity.

7 (3) The person is in need of correctional or rehabilitative
8 treatment that can best be provided by commitment of the person
9 to a penal facility.

10 (4) Imposition of a reduced sentence or suspension of the
11 sentence and imposition of probation would depreciate the
12 seriousness of the crime.

13 (5) The victim of the crime was less than twelve (12) years of age
14 or at least sixty-five (65) years of age.

15 (6) The victim of the crime was mentally or physically infirm.

16 (7) The person committed a forcible felony while wearing a
17 garment designed to resist the penetration of a bullet.

18 (8) The person committed a sex crime listed in subsection (e) and:

19 (A) the crime created an epidemiologically demonstrated risk
20 of transmission of the human immunodeficiency virus (HIV)
21 and involved the sex organ of one (1) person and the mouth,
22 anus, or sex organ of another person;

23 (B) the person had knowledge that the person was a carrier of
24 HIV; and

25 (C) the person had received risk counseling as described in
26 subsection (g).

27 (9) The person committed an offense related to controlled
28 substances listed in subsection (f) if:

29 (A) the offense involved:

30 (i) the delivery by any person to another person; or

31 (ii) the use by any person on another person;

32 of a contaminated sharp (as defined in IC 16-41-16-2) or other
33 paraphernalia that creates an epidemiologically demonstrated
34 risk of transmission of HIV by involving percutaneous contact;

35 (B) the person had knowledge that the person was a carrier of
36 the human immunodeficiency virus (HIV); and

37 (C) the person had received risk counseling as described in
38 subsection (g).

39 (10) The person committed the offense in an area of a
40 consolidated or second class city that is designated as a public
41 safety improvement area by the Indiana criminal justice institute
42 under IC 36-8-19.5.

(11) The injury to or death of the victim of the crime was the result of shaken baby syndrome (as defined in IC 16-41-40-2).

(12) Before the commission of the crime, the person administered to the victim of the crime, without the victim's knowledge, a sedating drug or a drug that had a hypnotic effect on the victim, or the person had knowledge that such a drug had been administered to the victim without the victim's knowledge.

(13) The person:

(A) committed trafficking with an inmate under IC 35-44-3-9;
and

(B) is an employee of the penal facility.

(14) The person committed the offense in the presence of an unemancipated child less than eighteen (18) years of age.

(c) The court may consider the following factors as mitigating circumstances or as favoring suspending the sentence and imposing probation:

(1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.

(2) The crime was the result of circumstances unlikely to recur.

(3) The victim of the crime induced or facilitated the offense.

(4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.

(5) The person acted under strong provocation.

(6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime.

(7) The person is likely to respond affirmatively to probation or short term imprisonment.

(8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.

(9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.

(10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.

(11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.

(d) The criteria listed in subsections (b) and (c) do not limit the

1 matters that the court may consider in determining the sentence.

2 (e) For the purposes of this article, the following crimes are
3 considered sex crimes:

- 4 (1) Rape (IC 35-42-4-1).
- 5 (2) Criminal deviate conduct (IC 35-42-4-2).
- 6 (3) Child molesting (IC 35-42-4-3).
- 7 (4) Child seduction (IC 35-42-4-7).
- 8 (5) Prostitution (IC 35-45-4-2).
- 9 (6) Patronizing a prostitute (IC 35-45-4-3).
- 10 (7) Incest (IC 35-46-1-3).
- 11 (8) Sexual misconduct with a minor under IC 35-42-4-9(a).

12 (f) For the purposes of this article, the following crimes are
13 considered offenses related to controlled substances:

- 14 (1) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
- 15 (2) Dealing in a schedule I, II, or III controlled substance
16 (IC 35-48-4-2).
- 17 (3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- 18 (4) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- 19 (5) Possession of cocaine or a narcotic drug (IC 35-48-4-6).
- 20 (6) Possession of a controlled substance (IC 35-48-4-7).
- 21 (7) Dealing in paraphernalia (IC 35-48-4-8.5).
- 22 (8) Possession of paraphernalia (IC 35-48-4-8.3).
- 23 (9) Offenses relating to registration (IC 35-48-4-14).

24 (g) For the purposes of this section, a person received risk
25 counseling if the person had been:

- 26 (1) notified in person or in writing that tests have confirmed the
27 presence of antibodies to the human immunodeficiency virus
28 (HIV) in the person's blood; and
- 29 (2) warned of the behavior that can transmit HIV.

30 **SECTION 2. [EFFECTIVE JULY 1, 2001] IC 35-38-1-7.1, as**
31 **amended by this act, applies to all offenses for which the offender**
32 **is initially convicted after June 30, 2001.**

(Reference is to SB 248 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 10, Nays 0.

Senator Long, Chairperson